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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of)

Biennial Regulatory Review -- Amendment of)
Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95,)
97 and 101 of the Commission's Rules to)
Facilitate the Development and Use of the)
Universal Licensing System in the Wireless)
Telecommunications Services)

WT Docket No. 98-20

To: The Commission

**COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

**THE AMERICAN PETROLEUM
INSTITUTE**

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SUMMARY

API generally supports the Commission's efforts to implement a Universal Licensing System ("ULS"), institute electronic filing procedures and streamline its application and licensing rules for the wireless radio services. With regard to the Commission's specific proposals, API offers a number of recommendations aimed at preventing abuses and inequities and promoting a smooth transition to the ULS.

To begin with, API urges the Commission to adopt certain safeguards in connection with its plan to require the electronic filing of all applications beginning on January 1, 1999. For instance, to deter the filing of fraudulent applications for license assignment, API believes that, in addition to the "electronic signature" of the purported assignor, the Commission should continue to obtain some form of independent verification from the assigning party, which demonstrates that it has consented to the assignment. API also encourages the Commission: (1) to provide a 24-hour "grace period," whereby parties who miss electronic filing deadlines due to unforeseeable technical problems may submit their applications together with a sworn statement describing the circumstances which resulted in the late filing; and (2) to delay the onset of mandatory electronic filing until six months after the Commission's new rules regarding the ULS are published in the Federal Register.

Consistent with the Commission's goals of streamlining its regulatory requirements and eliminating unnecessary rules, API believes that the Commission should not impose any additional ownership reporting requirements on applicants and licensees in non-auctionable radio services that use their licensed spectrum primarily for private, internal (non-commercial) communications. Such internal use of the spectrum does not raise the potential anti-competitive or spectrum management concerns that may arise in the commercial context.

API also urges the Commission to retain the 60-day period currently applicable in the Private Land Mobile Radio Service ("PLMRS") and the Fixed Microwave Services for the resubmission of applications that have been returned by the Commission as defective. The 30-day period contemplated by the Commission likely would fail, in some instances, to provide applicants with adequate time to complete the necessary corrections and, where necessary, to have their applications reCOORDINATED. Further, the Commission should not eliminate the 30-day license reinstatement option in the PLMRS and Fixed Microwave Services , as this is an important safeguard which helps minimize unnecessary disruptions to vital private radio systems.

While API generally agrees with the Commission's proposals regarding the use of the ULS to ensure licensee compliance with construction and coverage requirements, API believes that licensees should be provided adequate opportunities to demonstrate

compliance prior to the initiation of license termination procedures. API also supports the Commission's proposals to eliminate certain coordination and filing requirements in the Fixed Microwave Services and urges the Commission to amend its rules regarding major changes in the mobile services so as to make them consistent with the rules governing the microwave services.

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To: The Commission

**COMMENTS
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AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Comments in response to the Commission's Notice of Proposed Rule Making ("Notice")^{1/} in the above-referenced proceeding. The Notice proposes new rules to implement the Commission's Universal Licensing System ("ULS") and to streamline the Commission's application and licensing procedures in the Wireless Telecommunications Services.

^{1/} 63 Fed. Reg. 16938 (April 7, 1998).

I. BACKGROUND

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API's Telecommunications Committee is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications systems, facilities in the Private Land Mobile Radio Service ("PLMRS") and the Fixed Microwave Services. API's members utilize PLMRS systems, for example, to support the search for and production of oil and natural gas, to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, to process and refine these energy sources and to facilitate their ultimate delivery to industrial, commercial and residential customers. Likewise, Fixed Microwave systems serve a variety of vital telecommunications requirements, including communications to remote oil and gas exploration and production sites for voice and data applications, for

supervisory control and data acquisition systems, to communicate with refineries and to extend circuits to remote pipeline pump and compressor stations.

3. Due to the importance of PLMRS and Fixed Microwave Services systems to the operations of its members, API has participated in all of the Commission's major rule making proceedings addressing use of the spectrum in these telecommunications services.

II. COMMENTS

A. To Prevent Abuses and Inequities, the Electronic Filing Process Must Be Accompanied by Certain Safeguards

4. The Commission has proposed to require the electronic filing of all applications in all wireless services beginning on January 1, 1999. (Notice at ¶ 21.) While API shares the Commission's belief that electronic filing ultimately will facilitate the application and licensing processes and reduce the costs associated therewith, API urges the Commission to adopt certain safeguards aimed at ensuring that abuses do not occur and that applicants are not unfairly penalized for unforeseeable technical problems.

5. One potential avenue of abuse stems from the Commission's proposal that applicants who file electronically need not provide the Commission with paper copies.

(Notice at ¶ 25.) API agrees that, in most instances where electronic filing is to occur, the submission of paper copies as well would be an unnecessary burden. A possible exception, however, is in the context of the license assignment process. Applications for assignment presently are filed by the assignee, but must be accompanied by documentation containing the written signature of the assignor. Although the Commission's proposed Form 603 Application for Assignment of Authorization contains a section entitled "Assignor Certification Statements," all that apparently would be required by way of certification would be the typing of the name of the assignor in the name and signature blocks. Thus, if no paper copy is required, a party could apply for assignment of another party's license(s) without ever obtaining the written signature -- and hence the consent -- of the purported assignor. The risk of fraudulent assignment through such means appears greatest in instances where the purported assignor has not yet constructed its system or has not been operating on a regular basis and, therefore, may not become aware that someone else has initiated operations under its license.

6. API recognizes that such fraudulent behavior may be somewhat deterred by the fact that a forged "electronic" signature could be punished by the Commission and/or the courts in the same manner as a forged written signature. However, it is likely to be more difficult to prove that a party has forged an electronic signature, as many cases of alleged electronic forgery may amount to no more than a swearing contest between the "assignor" and the "assignee." To avert such situations, API recommends that the

Commission obtain some form of verification from the assignor which demonstrates that it has consented to the assignment. This verification could take the form of a companion electronic filing which could only be made by the assignor using its confidential Taxpayer Identification Number ("TIN") and related password, or the Commission could simply require that every electronically filed application for assignment be accompanied by the submission of one original executed paper version of the application.

7. API also is concerned that mandatory electronic filing may unfairly penalize applicants who miss filing deadlines as a result of unforeseeable technical difficulties. Recognizing that "some applicants may not have access to computers with the hardware and capability to utilize the software necessary to submit their applications electronically," the Commission has sought comment on whether certain wireless radio services should be exempted from the proposed mandatory electronic filing requirement. (Notice at ¶ 22.) While API takes no position on whether any particular class of applicants should receive such a general exemption, it notes that even large companies and other applicants with sophisticated computer facilities may, on occasion, experience technical problems with their systems.

8. Accordingly, API believes that, where an applicant has engaged in a good faith effort to avert and/or resolve such technical problems but is nonetheless unsuccessful in this regard, it should not be required to suffer the consequences of a

missed filing deadline. To address this situation, API proposes that the Commission provide a 24-hour grace period following the filing deadline during which an applicant who was subject to the mandatory electronic filing requirement would be permitted to submit its application either electronically or manually, together with a detailed sworn statement describing the circumstances which resulted in the missed filing deadline. The Commission would then determine whether to accept or reject the application, based upon the strength of the justification provided.

9. As an additional protection, API recommends that the Commission delay the onset of mandatory electronic filing until six months after the final rules to implement the ULS are published in the *Federal Register*. During this time, the Commission could resolve any ongoing technical problems with the ULS, while applicants and licensees could become more familiar with the new forms and procedures being implemented and could experiment with electronic filing on an optional basis.

10. API also asks the Commission to clarify how mandatory electronic filing procedures will apply in circumstances where applications typically have been submitted directly to the Commission by the applicant's frequency coordinator. For instance, will applicants be expected to disclose their TINs and confidential passwords to their frequency coordinator so that the coordinator can perform the electronic filing? API believes that many applicants may be averse to such an approach. If, instead, the

applicant is to be responsible for completing the electronic filing, how will the coordination certification prepared by the coordinator be associated with the application? Such issues must be addressed before mandatory electronic filing may be implemented.^{2/}

B. Applicants and Licensees in Private, Non-Auctionable, Radio Services Should Not Be Required to Submit Additional Ownership Information

11. The Commission has requested comment as to whether it should use the ULS to collect more extensive ownership information from applicants and licensees in non-auctionable services than what is currently required. (Notice at ¶ 48.) In this regard, the Commission stated that, in some instances, "licenses in private, non-auctionable services are held by commercial enterprises such as railroads or utilities, which could also hold interests in licenses in auctionable wireless services." (*Id.*) Consequently, the Commission has asked "whether the possible holding of both types of licenses raises potential competitive or spectrum management issues that would justify requiring such entities to provide ownership information in connection with applications for non-auctionable as well as auctionable, licenses." (*Id.*)

^{2/} As a general (but unrelated) licensing matter, API believes that applicants should be permitted to use the English system of measurements (*i.e.*, feet) for antenna heights and ground elevations, as these measurements are consistent with the inputs used to register antenna structures with the Commission. Further, the conversion of the English measurement into the metric system should be accurate to one decimal place in order to ensure that reconversion back into the English system results in the same original measurement, accurate to within one foot.

12. While private licensees such as railroads and utilities are in fact "commercial enterprises," they generally do not use their licensed spectrum for commercial purposes. Rather, these licensees primarily operate private systems that are used to support their critical, internal communications requirements. Even if these licensees were to hold interests in auctionable licenses, it likely would be for the purpose of providing private, internal services. Under these circumstances, concerns about anti-competitive behavior and market monopolization simply do not apply as they might in the context of the commercial provision of telecommunications services.^{3/} Thus, there is no reason to impose additional ownership reporting requirements in non-auctionable services that are used primarily for private, internal communications. If the Commission truly is seeking in this proceeding to eliminate unnecessary requirements and streamline its licensing rules, it should not create new requirements that will unduly burden licensees while serving no legitimate regulatory purpose.

^{3/} It is for this reason that private spectrum use typically is not subject to spectrum aggregation caps or other such limitations. Indeed, the imposition of such caps could endanger public safety by impairing the ability of private licensees to monitor and control their operations to the extent they deem necessary.

C. Applicants Should be Afforded 60 -- Rather Than 30 -- Days to Resubmit Applications That Have Been Rejected by the Commission as Defective

13. Where an application is accepted by the ULS but subsequently found to have missing or incorrect information, the Commission has proposed that the applicant should be notified of the defect and allowed 30 days to correct or amend the application if the amendment is minor. (Notice at ¶ 53.) The Commission has further indicated that, if the amendment is major, the applicant's ability to refile would depend on whether major amendments are permitted under the circumstances (e.g., whether the relevant filing window has closed). (Id.) Although the Commission did not state in its Notice that the proposed 30-day period for resubmission of applications would be a change to its existing rules, these rules presently provide applicants in the PLMRS and Fixed Microwave Services with 60 days to refile their applications without losing their original place in the Commission's processing order or being required to submit an additional application fee. See 47 C.F.R. §§ 90.141 and 101.35(c).

14. API urges the Commission to retain the 60-day period for the resubmission of applications. As noted above, the Commission contemplates that, where permitted by the applicable service rules and filing windows, some resubmissions may involve major amendments. In such instances, the applicant may need to have the application reCOORDINATED or recertified by an appropriate frequency coordinator. The

duration of this process typically will depend, at least in part, on the coordinator's speed of processing and, therefore, may be beyond the control of the applicant. Further, even some minor amendments or corrections may require more than 30 days to complete, particularly where technical calculations are involved or approval by several levels of personnel within a large company is necessary. In light of these considerations, API believes that applicants should be permitted 60 days, rather than 30 days, to correct, amend and re-file applications deemed to be defective. To achieve consistency among the rules for the various wireless radio services, the Commission could apply this 60-day rule in all services.

15. As an additional matter, API notes with some concern that the Commission apparently has omitted to include the contemplated 30-day resubmission provision in its proposed amendments to Part 1 of its rules. (See Appendix B to Notice.) Regardless of whether a 30- or 60-day period ultimately is adopted, the procedures governing the resubmission of applications -- including the relevant time period for refileing -- should be clearly stated in the Commission's rules. These rules also should specify that applications resubmitted in a timely manner will be processed in their original place in the Commission's processing order and need not be accompanied by another filing fee.

D. The Commission Should Not Discontinue Reinstatement Applications

16. Under the Commission's existing rules, PLMRS and Fixed Microwave Services licensees who do not file a timely renewal application are provided a 30-day period following the expiration of their licenses during which they may request reinstatement. See 47 C.F.R. §§ 90.149(a) and 101.65(b). The Commission has proposed, however, to eliminate the reinstatement period and amend its rules such that all licenses would cancel automatically following expiration. (Notice at ¶¶ 55-56.) In support of its proposal, the Commission has stated that reinstatement is not permitted in other radio services and that the ULS will facilitate the license renewal process by notifying licensees 90 days before the expiration of their licenses.

17. Even under the present licensing regime (i.e., without the benefit of the ULS), the Commission typically notifies licensees in advance of their upcoming license expiration dates. Nevertheless, inadvertent expirations occur on occasion because the appropriate representative of the licensee does not receive the Commission's license renewal notification letter. In many such instances, failure to receive notification is due to fact that the licensee has been undergoing a major transition such as a merger, acquisition, or other type of wide-spread corporate restructuring. The license reinstatement option provides such licensees with an opportunity to rectify the error in a

manner that minimizes disruption to their critical private telecommunications systems.

The Commission should **not** eliminate this important safeguard.

18. At the very least, API believes that the Commission should allow a one-year transition period, following implementation of the ULS, before it discontinues the reinstatement option. This would provide licensees with adequate time to become familiar with the new rules and, if they have not already done so, to update their licensee records in the ULS database so as to reflect an appropriate licensee address and "point of contact." A transition period also would enable the Commission to "iron out" any problems with its new notification system before requiring licensees to suffer the potentially harsh consequences of the proposed elimination of reinstatement applications.

E. With Minor Modifications, API Supports the Commission's Proposals Regarding Construction and Coverage Verification

19. API agrees with the Commission that the ULS should be used to notify licensees in advance of applicable construction or coverage deadlines and that licensees should then be required to verify that they have met these requirements by updating their FCC Forms 601 via the ULS. (Notice at ¶ 60.) Such procedures should serve to reduce improper spectrum hoarding and license speculation, thereby freeing up channels for licensees with legitimate spectrum needs. With regard to how far in advance licensees should be notified of upcoming deadlines, API recommends 60 days.

20. Although API also agrees with the Commission that failure to receive a reminder letter should not be considered an excuse for non-compliance with construction or coverage requirements (Notice at ¶ 60), API believes that the Commission's proposed procedures for automatic license termination following a licensee's failure to file the required electronic notification (see Notice at ¶ 61) are too harsh. Under the Commission's proposed amended rules, a licensee who has in fact completed construction or satisfied its coverage requirements in a timely manner, but has inadvertently failed to verify compliance with these requirements, will be advised by the Commission of the termination of its authorization. Presumably, such a licensee would be required to file a Petition for Reconsideration and undergo a lengthy review process in order to have its authorization reinstated. To avert automatic license cancellation under these circumstances, API suggests that, following a licensee's failure to file the required verification form in a timely manner, the Commission should send another notification letter advising the licensee of the missed deadline and providing it with a final 30-day period in which to verify compliance with the applicable requirements. Failure to do so following this second inquiry by the Commission should then lead to license cancellation procedures.^{4/}

^{4/} The Commission's proposed Section 1.946(d) of its rules states that notification of compliance with construction or coverage requirements must be filed "within 15 days of the expiration of the applicable construction or coverage period." Because licensees sometimes complete construction well in advance of the applicable deadline, API urges the Commission to clarify that licensees also have the option of filing their notification forms on any date prior to the construction expiration deadline.

21. Finally, API reminds the Commission that some licenses in the PLMRS are granted with "extended implementation" or "slow growth" status, whereby the licensee may be provided with up to five years to complete construction of its system. See 47 C.F.R. § 90.629. Accordingly, API urges the Commission to ensure that such status is reflected in the ULS database where applicable and that such licensees are not expected to verify completion of construction until the end of their authorized "slow growth" periods. API also encourages the Commission to use the ULS to notify "slow growth" licensees 30 days in advance of the deadline for filing their annual implementation status reports and to modify proposed FCC Form 601, Schedule K as necessary to enable licensees to use this form to file their annual reports electronically.

F. Other Issues

22. To promote consistency in its rules, the Commission has proposed to require frequency coordination in the Fixed Microwave Services only for those applicants filing amendments and modifications involving changes to technical parameters that are classified as major. (Notice at ¶ 50.) API strongly supports this proposal, as it would eliminate the unnecessary financial burden and time delay associated with the coordination of minor amendments and modifications.

23. As a related matter, API notes that the Commission's proposed rules regarding major versus minor filings retain certain distinctions between mobile and microwave services. (See Notice at ¶ 38.) For instance, in the mobile services, any change in latitude or longitude is considered a major change, while in the microwave services, only changes in transmit antenna location of more than five seconds are deemed to be major. The mobile service rules also are more restrictive with respect to, among other things, changes in antenna height above average terrain and effective radiated power. API believes that the microwave standards are appropriate and that differences in propagation or other factors do not justify the existing discrepancies between the mobile and microwave standards. Accordingly, API urges the Commission to amend its rules regarding major changes in the mobile services so as to make them consistent with the rules governing the microwave services.

24. In connection with its efforts to minimize licensing and technical data submission requirements, the Commission has proposed to eliminate the requirement that applicants in the Fixed Microwave Services file technical information regarding type acceptance number, line loss, channel capacity and baseband signal type. (Notice at ¶ 84.) Because API agrees that these filing requirements are unnecessary, it supports the Commission's proposal to eliminate them.

III. CONCLUSION

25. API applauds the Commission's efforts to simplify and further automate its wireless application and licensing procedures and to streamline and consolidate its licensing rules. To implement these changes in a manner that promotes fairness to all applicants and licensees and to facilitate a smooth transition to the ULS, API urges the Commission to: (1) adopt safeguards to prevent the filing of fraudulent applications for license assignment; (2) allow a 24-hour "grace period" where parties miss electronic filing deadlines due to unforeseeable technical problems; (3) delay the onset of mandatory electronic filing; (4) recognize that it is not necessary to impose additional ownership reporting requirements on applicants and licensees in non-auctionable services that use their systems primarily for private, internal communications; (5) provide all applicants with 60 days to correct and resubmit applications that have been returned by the Commission as defective; (6) retain the 30-day license reinstatement option in the PLMRS and the Fixed Microwave Services; (7) adopt strict but reasonable procedures for enforcing construction and coverage requirements; and (8) eliminate unnecessary distinctions regarding what constitutes a major filing in the mobile and microwave services.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Comments and urges the Federal

Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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